



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE October 7, 2022

TO Members, Select Committee on School Facilities

FROM Tania Hytrek, Operations Administrator

SUBJECT 23LSO-0234, School facilities-building acquisition.

INTRODUCTION:

During the September 8-9, 2022 Select Committee on School Facilities (Committee) meeting, the Committee directed staff draft a bill to transfer ownership of the state-owned portion of the facility formerly known as the School for the Deaf, located in Casper, Wyoming, to Natrona County School District Number One and further directed that the draft require Natrona County School District Number One to begin negotiations to obtain its portion of the building owned by the City of Casper. Recall, the noted facility is leased by Natrona County School District Number One and is utilized by Pineview Elementary School in the delivery of its required educational program. A portion of the facility and surrounding land is owned by the City of Casper and another portion is owned by State of Wyoming.

In response to the Committee directive, LSO staff prepared the attached bill draft, 23LSO-0234, School facilities-building acquisition (WD 0.4). The bill poses two constitutional considerations for the Committee. The first under Article 3, Section 27, which prohibits special and local laws and the second under Article 2, Section 1, which is commonly referred to as separation of powers. That said, the Wyoming Supreme Court has “unequivocally held that the Wyoming constitution establishes education as a fundamental right.” *State v. Campbell County School District*, 2008 WY 2, ¶11, 181 P.3d 43 (Wyo. 2008) (*Campbell IV*). The Legislature is required to establish a public education system that is “complete and uniform” and “through and efficient...[and] adequate to the proper instruction of all youth of the state, between the ages of six and twenty-one years, free of charge.” Wyoming Constitution, Article 7, Sections 1 and 9. This obligation includes educational facilities necessary to deliver the required educational program. It is indeterminable how the Wyoming Supreme Court would weigh the potential constitutional concerns under Article 3, Section 27 or Article 2, Section 1 if 23LSO-0234, School facilities-building acquisition (WD 0.4) were enacted into law and then challenged. That said, LSO staff has an obligation to advise the Committee of such potential issues.

Also of note, a party challenging the constitutionality of a statute bears the burden in proving the statute is unconstitutional beyond a reasonable doubt. *Gordon v. State*, 2018 WY 32, ¶ 12, 413 P.3d 1093 (Wyo. 2018). The Court begins from the premise that statutes are constitutional and any doubt must be resolved in favor of the statute’s constitutionality. *Id.*

LSO staff did identify an alternative approach that Chairman Pappas directed be prepared for the Committee’s consideration at the upcoming meeting. Wyoming Statute 9-2-3204(b)(viii) could be amended

to include a provision to authorize the disposition or sale of real property owned by the State without the need for an appraisal and payment of fair market value if the sale or disposition involves a political subdivision. Political subdivision could include counties, cities, school districts, and special districts within the state. This more general approach would not be subject to similar constitutional considerations outlined herein.

DISCUSSION:

Subsection (a) of the noted legislation requires the State Building Commission, the Department of Administration and Information, the State Construction Department, and the School Facilities Commission to assist Natrona County School District Number One in obtaining the title of the facility formerly known as the School for the Deaf and requires the State Construction Department to utilize appropriations under 2022 Wyoming Session Laws, Chapter 51, Section 313(j)(ix) for land acquisitions should funds be required to secure title to the noted property.

Subsection (b) of the draft provides that for purposes of obtaining title to the facility, Wyoming Statute 9-2-3204(b)(viii) shall not apply. The noted statutory provision requires the Department of Administration and Information supervise and approve the sale of all State agency owned property and further prohibits disposal of any real property valued in excess of \$15,000 for less than fair market value. Absent an exception, this statute prohibits the State Building Commission from simply transferring ownership of the portion of the facility owned by the State of Wyoming to Natrona County School District Number One as envisioned by the Committee. Because the drafting instructions were specific to this property, the only way to accomplish this was to exempt this single transaction from the noted statutory requirement.

Article 3, Section 27 of the Wyoming Constitution reads in relevant part:

The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For... providing for the management of common schools;...prescribing the powers or duties of officers in counties, cities, townships or school districts;... In all other cases where a general law can be made applicable no special law shall be enacted.”

In the most general terms, Article 3, Section 27 requires a statute must be reasonable, and operate alike upon all persons in the same circumstances. See *Mountain Fuel Supply Company v. Emerson*, Wyo., 578 P.2d 1351, 1356 (1978); *Meyer v. Kendig*, 641 P.2d 1235, 1240 (Wyo. 1982). The bill draft exempts a single transaction from the statutory requirement that the disposal of real property owned by the State and valued at more than \$15,000 cannot be completed for less than fair market value. Other sales of State property will be subject to the requirements of Wyoming Statute 9-2-3204(b)(viii). Additionally, perhaps of less concern but still notable, the draft requires four state agencies to coordinate with a single school district in purchasing a specific facility. While a case directly on point could not be located, an argument exists that 23LSO-0234, School facilities-building acquisition (WD 0.4) will not treat similarly situated parties the same.

Article 2, Section 1 of the Wyoming Constitution reads in relevant part:

The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

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This clause is commonly referred to as the separation of powers clause, meaning there are three coequal and separate branches of government that comprise the Wyoming state government. Each branch is given specific constitutional authority and Article 2, Section 1 stands for the premise that one branch cannot usurp the constitutional duties of another branch. That said, the Wyoming Supreme Court recognized a somewhat flexible approach to separation of powers and one that favors integrating powers into a workable, balanced government, as opposed to an “air-tight compartment” view. See *Billis v. State*, 800 P.2d 401, 415 (1990 Wyo.). Again, while a case directly on point could not be located, an argument exists that directing the executive branch to contravene an existing statute for a single transaction may run afoul duties under the control and oversight of the executive branch.

As noted in the introduction of this memo, the Legislature’s obligation in the context of public education is well defined and the subject of 30 years of case law. *Washakie County School District No. One v. Herschler*, 606 P.2d 310 (Wyo. 1980); *Campbell County School District v. State*, 907 P.2d 1238 (Wyo. 1995) (*Campbell I*); *State v. Campbell County School District*, 2001 WY 19, 19 P.3d 518 (Wyo. 2001) (*Campbell II*); *State v. Campbell County School District*, 2001 WY 90, 32 P.3d 325 (Wyo. 2001) (*Campbell III*); *Campbell IV*. Whether this exhaustive caselaw and the many constitutional provisions related to public education would have an impact on the Court’s analysis in the context of Article 3, Section 27 and Article 2, Section 1 cannot be determined.

Should you have questions, please advise.